

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

1 IN THE MATTER OF)
2 DYE ENSLOW, dba)
3 Lyewood Apartments,)
4)
5 Appellant,)
6)
7 vs.)
8)
9 PUGET SOUND AIR POLLUTION)
10 CONTROL AGENCY,)
11)
12 Respondent.)

PCHB No. 494

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

13 THIS MATTER being an appeal of a \$50.00 civil penalty for an alleged
14 smoke emission violation of respondent's Regulation I; having come on
15 regularly for hearing before the Pollution Control Hearings Board on the
16 6th day of May, 1974, at Seattle, Washington; and appellant, David
17 Enslow appearing through his parents, Mr. and Mrs. Robert Enslow and
18 respondent, Puget Sound Air Pollution Control Agency, appearing through
19 its attorney, Keith D. McGoffin; and Board members present at the
20 hearing being Walt Woodward and Mary Ellen McCaffree; and the Board
21 having considered the sworn testimony, exhibits, records and files
22 thereto and having entered on the 8th day of May, 1974, its proposed
23 Findings of Fact, Conclusions of Law and Order, and the Board having

1 served said proposed Findings, Conclusions and Order upon all parties
2 herein by certified mail, return receipt requested and twenty days
3 having elapsed from said service; and

4 The Board having received no exceptions to said proposed Findings,
5 Conclusions and Order; and the Board being fully advised in the
6 premises; now therefore,

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
8 Findings of Fact, Conclusions of Law and Order, dated the 8th day of
9 May, 1974, and incorporated by this reference herein and attached
10 hereto as Exhibit A, are adopted and hereby entered as the Board's
11 Final Findings of Fact, Conclusions of Law and Order herein.

12 DONE at Lacey, Washington, this 11th day of June, 1974.

13 POLLUTION CONTROL HEARINGS BOARD

14
15 Walt Woodward
16 WALT WOODWARD, Chairman

17
18 Mary Ellen McCaffree
19 MARY ELLEN McCAFFREE, Member

CERTIFICATION OF MAILING

I, La Rene C. Barlin, certify that I mailed copies of the foregoing document on the 15th day of June, 1974, to each of the following parties:

Mr. and Mrs. Robert Enslow
1624 Shenandoah Drive East
Seattle, Washington 98102

Mr. Keith D. McGoffin
Barkey, Marsico, Roval & McGoffin
319 South Yakima Avenue
Tacoma, Washington 98405

Puget Sound Air Pollution Control Agency
410 West Harrison Street
Seattle, Washington 98119

Mr. David Enslow
Lynwood Apts.
Apt. No. 201
2405-4th Avenue
Seattle, Washington 98121

the foregoing being the last known post office addresses of the above-named parties. I further certify that proper postage had been affixed to the envelopes deposited in the U.S. mail.


LA RENE C. BARLIN
POLLUTION CONTROL HEARINGS BOARD

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
DAVE ENSLOW,)
d.b.a Lynwood Apartments,)
Appellant,)
vs.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB No. 494

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

This matter, the appeal of a \$50 civil penalty for an alleged smoke
emission violation of respondent's Regulation I, came before the
Pollution Control Hearings Board (Walt Woodward, presiding officer, and
Mary Ellen McCaffree) in the Washington Commerce Building, Seattle, on
May 6, 1974.

Appellant was represented by Mr. and Mrs. Robert Enslow, parents of
appellant, and considered by this Board to be employees of the instant
apartment house in this matter. Respondent appeared through Keith D.
McGoffin. Richard Reinertsen, Olympia court reporter, recorded the

Exhibit A

1 proceedings.

2 Witnesses were sworn and testified. Exhibits were admitted.

3 From testimony heard and exhibits examined, the Pollution Control
4 Hearings Board makes these

5 FINDINGS OF FACT

6 I.

7 On December 19, 1973, from the boiler stack of a structure owned
8 by appellant, the Lynwood Apartments, 2405 Fourth Avenue, Seattle,
9 King County, there was emitted for six consecutive minutes black smoke
10 equivalent in shade to No. 4 on the Ringelmann Scale.

11 II.

12 Section 9.03 of respondent's Regulation I makes it unlawful to
13 cause or allow for more than three minutes in any one hour period a
14 smoke emission darker in shade than No. 2 on the Ringelmann Scale.
15 Section 3.29 of Regulation I authorizes the imposition of a civil penalty
16 of not more than \$250 for any violation of Regulation I.

17 III.

18 The incident described in Finding of Fact I having been observed
19 by an inspector on respondent's staff, respondent served appellant with
20 Notice of Violation No. 8983, citing Section 9.03 of Regulation I.
21 Subsequently, and in connection therewith, respondent served appellant
22 with Notice of Civil Penalty No. 1306 in the sum of \$50, which penalty
23 is the subject of this appeal.

24 IV.

25 The incident described in Finding of Fact I was caused by the
26 malfunction of a burner fueled by heavy crude oil. Subsequently, and

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 in an effort to fuel the burner with a more pollution-free substance,
2 appellant converted the burner to Diesel oil at a cost of \$1,200.

3 V.

4 Any Conclusion of Law hereinafter recited which is deemed to be a
5 finding of Fact herewith is adopted as such.

6 From these Findings, the Pollution Control Hearings Board comes
7 to these

8 CONCLUSIONS

9 I.

10 Appellant was in violation of Regulation I as cited in Notice of
11 Violation No. 9983.

12 II.

13 The penalty invoked in Notice of Civil Penalty No. 1308 is
14 reasonable, but appellant is entitled to further consideration because
15 of his subsequent expenditure to be in compliance with Regulation I.

16 III.

17 Any Finding of Fact herein deemed to be a Conclusion of Law herewith
18 is adopted as such.

19 For these Conclusions, the Pollution Control Hearings Board
20 issues this

21 ORDER

22 The appeal is denied and appellant is directed to pay respondent
23 forthwith \$25, the balance of \$25 to be suspended pending no similar
24 violation for a period of six months from the date this Order becomes
25 final.

26 FINDINGS OF FACT,
27 CONCLUSIONS AND ORDER

DEPT at Lacey, Washington this 25th day of May, 1974.

POLLUTION CONTROL HEARINGS BOARD

WALT WOODWARD, Chairman

MARY ELLEN McCAFFREE, Member

FINDINGS OF FACT,
CONCLUSIONS AND ORDER